

# THE RESTITUTION REVIEW

The State Board of Control's Quarterly Newsletter on Restitution

## RIVERSIDE COUNTY DEVOTES CRITICAL RESOURCES TO RESTITUTION

**A**s reflected in past issues of the Restitution Review, the State Board of Control (SBOC) is always interested in new ideas and suggestions on how the criminal justice community can more effectively administer restitution. Accordingly, the SBOC is pleased to highlight the Riverside County Consolidated/Coordinated Courts and their efforts in the area of the imposition and collection of restitution.

In 1995, Riverside County merged its Court Revenue and Recovery Department with the Probation Office's Revenue and Recovery and created The Financial Services Division (FSD) of the Consolidated Courts. Prior to the consolidation, several departments in Riverside County were attempting to collect from an offender simultaneously. This led to confusion, low collection amounts and ultimately, many write-offs of collection accounts as "bad debt." The FSD was created to address these problems and has proven to be successful.

According to Rick Feldstein, Deputy Executive Officer of the Administrative Services Division of the Consolidated Courts restitution fines are considered a "given" in the Riverside County courts, and fines are regularly imposed on all felony and misdemeanor convictions. In accordance with Penal Code Section 1202.4 (f), Riverside Courts ensure that when a victim and his/her losses are identified at the time of sentencing restitution is imposed in the amount of the victim's



losses. Additionally, in those situations where either the specific victim has not been identified or his/her losses have not been determined, a "to be determined" restitution order is consistently imposed. In both of these situations, the cases are then forwarded to the FSD.

FSD's process varies after receiving the case depending upon whether a dollar amount was imposed at the time of sentencing. In those situations where the victim is not known, the FSD is then given the task of identifying and locating a victim where losses have been or likely will be incurred. When a victim has been identified and it has been determined that the victim incurred losses, the FSD works with the victim to determine the amount of the losses. FSD's role in establishing victim's losses differs from many counties where probation is required to establish these losses. In the event a victim cannot be identified or located

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or no losses were incurred, FSD closes the case. Also noteworthy is that Riverside County's FSD determines restitution order amounts for victims whose offenders are under county jurisdiction as well as for victims whose offenders are sentenced to state institutions. Collection efforts by the FSD are suspended in these cases, but the order amount is determined.

Once a restitution order amount is set, FSD collectors contact the offender to notify him/her regarding payment of the restitution order, and the offender is offered the option of arranging a payment plan to repay the restitution obligation. Although the offender has the option of requesting a hearing to dispute the amount of the restitution, Riverside County reports that requests of this nature are low. If at any point in the collection process the offender willfully fails to pay, the FSD has the ability to file a motion for violation of probation.

To facilitate the collection process, Riverside County utilizes a software package developed to interface with the court's computer system. Entitled the Columbia Ultimate Business System (CUBS), the software package electronically transmits court-ordered financial obligations that are 30 days past due to FSD collectors. In addition to transmitting this information, the CUBS system also automatically generates a letter to each of the offenders. FSD collectors are then required to track the delinquent cases for promises to pay and schedule follow-ups as needed. It should be noted, whether an offender's obligations are owed to more than one court or for more than one case, these debts are "packaged" to enable collectors to arrange payment plans based on the offender's total court-ordered financial obligations. Also, CUBS allows the cases to be located by name, case number,

social security number, driver's license number or by address of the offender.

The effectiveness of the FSD is evident in the dollar amounts remitted in revenue to the Restitution Fund. Fiscal Year 1996-97, Riverside County remitted a total of \$4.2 million to the Restitution Fund through the collection of restitution fines and orders, penalty assessments, diversion and Driving Under the Influence fines. Of this amount, approximately \$1.6 million in restitution fine and order collections was eligible to receive a 10% rebate for their collection efforts. Approximately \$160,000 was remitted back to Riverside County to be further utilized for restitution collection.

The SBOC applauds Riverside County Consolidated/Coordinated Courts for their efforts in ensuring that the true intent of Penal Code Section 1202.4 regarding the imposition of "to be determined" restitution orders is upheld. By consistently imposing "to be determined" restitution orders and devoting critical resources to ensure that dollar amounts are placed in the "to be determined" orders through the FSD, Riverside County ensures that victims and their losses are not forgotten in the criminal justice process. If you would like to know more about this program, or would like to make arrangements to receive a more comprehensive presentation, you may contact:

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## BENCHMARKS FOR IMPOSING ABOVE THE MINIMUM FOR RESTITUTION FINES

**S**tatutory mandates require that for every felony and misdemeanor conviction the courts must impose a restitution fine. In accordance with Penal Code Section 1202.4 and Welfare and Institutions Code Section 730.6, the amount of the restitution fine may vary dependent upon whether the offender is a juvenile or adult, and whether the conviction is for a felony or misdemeanor offense. The bench is frequently in a quandary concerning the amounts which should be imposed between the statutory maximums and minimums. In accordance with Penal Code Section 1202.4(d), when the court is considering imposing a fine above the statutory minimums, the following factors may be considered:

*“the defendant’s inability to pay, the seriousness and gravity of the offense and the circumstances of [the crime’s] commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime.”*

Additionally, Penal Code Section 1202.4(b)(2) offers the option of utilizing the following formula:

***\$200 x number of years of imprisonment x number of felony counts of which the defendant is convicted***

Finally, because restitution fine amounts are returned to the State Board of Control (SBOC) and deposited into the Restitution Fund to be utilized to pay claims through the Victims of Crime Program (VOCP), the SBOC has created the following chart listing average VOCP payments by crime category. This chart

was published in a prior edition of the *Restitution Review* and has been updated to reflect Fiscal Year 1996-97 payment statistics. The SBOC encourages the bench to consider the dollar amounts listed below when making a determination regarding what amount to impose above the statutory minimum.

Crime Category	Average Payout
Assault	\$5,006
Homicide	\$5,509
Sexual Assault	\$5,635
Child Sexual Abuse	\$6,332
Child Physical Abuse	\$6,008
Domestic Violence	\$4,661
DWI/DUI	\$6,351

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## CDAA VICTIMS' RIGHTS MANUAL

In conjunction with the California District Attorney's Association (CDAA), the State Board of Control (SBOC) is pleased to announce the issuance of the CDAA Victims' Rights Manual. Planned for distribution in February of 1998 to District Attorney staff throughout the state, the manual contains valuable information regarding victims' rights in the criminal justice process as well as a chapter drafted by the SBOC on restitution. The restitution chapter includes the SBOC's Restitution Guide with a section referencing important case law and background information on the SBOC and the Victims of Crime Program. Please note, with the issuance of the Manual, the SBOC is again reminding the criminal justice community that it offers a restitution training program, and is willing to come to your office to conduct the training. Please contact Maureen Dumas, Restitution Analyst at (916) 327-0345, if you are interested in arranging a restitution training workshop. The SBOC and CDAA encourage any prosecutor with questions regarding victims' rights to utilize this Manual containing current and useful information. ☺

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## INDEX OF RESTITUTION REVIEW ARTICLES IS ON ITS WAY!

To assist the criminal justice community in fully utilizing the Restitution Review as a restitution reference tool, the State Board of Control is currently in the process of developing an index by subject matter of past articles in the Restitution Review. The index can be used to reference past articles, and if necessary, will allow readers to contact the SBOC to obtain a copy of a particular article. The SBOC anticipates issuing the index in the month of February 1998 to its general mailing list. ☺



The Restitution Review is a publication of the  
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## TO BE DETERMINED RESTITUTION ORDERS

**A**rticle I, Section 28 subsection (b) of the California Constitution states that:

***“It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.”***

For victims who have incurred all of their losses at the time their respective offender is sentenced, this constitutional right is generally upheld and the process involved with imposing restitution orders is relatively straightforward. However, for those victims whose losses are not known or have not been incurred at the time of the sentencing, this process is more complicated. Due to the fact that most offenders are “fast-tracked” through the criminal disposition process and depending upon the nature of the crime, many victim’s losses will not be incurred until well past the date an offender is sentenced (i.e. therapy expenses for child molest victim). Therefore, it is essential that courts take necessary steps to ensure that these victims’ right to restitution is enforced in a manner consistent with those whose losses are known at the time of sentencing.

To this end, the concept of “to be determined” (TBD) restitution orders exists in current statute. In accordance with Penal Code Section 1202.4(f), if a victim’s losses cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount “shall be determined at the direction of the court.”

The TBD restitution order is an especially important tool for the SBOC because the majority of Victims of Crime Program (VOCP) claims involve victims whose losses will not be fully known at the time of

sentencing. Additionally, because many victims do not come to the VOCP until after the criminal justice process is completed, it is essential that the TBD’s are imposed to ensure that the SBOC’s rights are protected at the time of sentencing. Once benefits are provided, the process allows for the TBD to be replaced by a dollar amount, thus ensuring that a revenue stream is available to continue assisting future VOCP claimants.

Although the statutes mandate that TBD restitution orders be imposed, many courts have been hesitant to impose TBD restitution orders for a variety of reasons. For instance, it is a common concern that the placement of dollar amounts in TBD restitution orders may ultimately clog court calendars due to an offender’s right to a restitution hearing. Another area of concern centers on determining when TBD restitution orders should be replaced with a specific amount of losses. This issue is especially problematic in situations where a victim’s losses are ongoing. Currently, there are no guidelines concerning when a TBD order should be modified to reflect a dollar amount. To address this issue, the SBOC is entertaining the concept of utilizing retired judges to essentially conduct “restitution hearings.” The SBOC’s intent in utilizing retired judges is to ultimately develop an administrative process to readily amend TBD restitution orders. It is further anticipated that guidelines can be developed to assist the criminal justice community to handle these situations.

In summary, the SBOC is working towards resolution of the issues surrounding TBD’s and encourages courts to impose a TBD in all cases where there is a victim

**CALIFORNIA DEPARTMENT OF CORRECTIONS  
RESTITUTION REVENUE  
JULY, AUGUST, SEPTEMBER 1997**

INSTITUTION	Jul-97			Aug-97			Sep-97		
	RESTITUTION	RESTITUTION	TOTAL	RESTITUTION	RESTITUTION	TOTAL	RESTITUTION	RESTITUTION	TOTAL
	FROM PAYROLL	FROM DEPOSITS		FROM PAYROLL	FROM DEPOSITS		FROM PAYROLL	FROM DEPOSITS	
MULE CREEK STATE PRISON	\$4,494.94	\$8,197.78	\$12,692.72	\$5,116.54	\$8,077.06	\$13,193.60	\$6,900.59	\$7,972.99	\$14,873.58
AVENAL STATE PRISON	\$6,231.12	\$14,137.30	\$20,368.42	\$5,980.81	\$15,404.16	\$21,384.97	\$6,292.74	\$13,120.72	\$19,413.46
CALIPATRIA STATE PRISON	\$4,038.97	\$9,742.70	\$13,781.67	\$4,215.17	\$9,134.74	\$13,349.91	\$4,549.83	\$10,459.26	\$15,009.09
CA. CORRECTIONAL CENTER	\$14,980.81	\$12,339.40	\$27,320.21	\$21,791.65	\$11,833.25	\$33,624.90	\$33,208.56	\$12,164.56	\$45,373.12
CA. CORRECTIONAL INSTITUTE	\$6,228.43	\$12,132.95	\$18,361.38	\$6,410.36	\$11,997.88	\$18,408.24	\$8,892.16	\$13,715.49	\$22,607.65
CENTRAL CA. WOMENS FACILITY	\$3,271.08	\$9,965.43	\$13,236.51	\$3,885.58	\$9,606.63	\$13,492.21	\$3,726.00	\$10,928.36	\$14,654.36
CENTINELA STATE PRISON	\$2,685.55	\$12,477.86	\$15,163.41	\$2,887.64	\$12,205.08	\$15,092.72	\$2,645.68	\$13,538.09	\$16,183.77
CA. INSTITUTION FOR MEN	\$4,390.02	\$4,244.17	\$8,634.19	\$5,068.07	\$8,317.46	\$13,385.53	\$4,806.46	\$6,113.92	\$10,920.38
CA. INSTITUTION FOR WOMEN	\$1,816.43	\$5,443.59	\$7,260.02	\$1,989.37	\$3,424.54	\$5,413.91	\$1,574.62	\$4,735.59	\$6,310.21
CA. MENS COLONY	\$10,196.87	\$15,845.43	\$26,042.30	\$11,393.13	\$13,288.67	\$24,681.80	\$12,699.19	\$13,584.80	\$26,283.99
CA. MEDICAL FACILITY	\$1,963.84	\$6,146.00	\$8,109.84	\$2,892.47	\$4,468.44	\$7,360.91	\$2,752.06	\$4,879.20	\$7,631.26
CA. STATE PRISON SOLANO	\$4,450.37	\$10,162.97	\$14,613.34	\$5,048.63	\$8,057.30	\$13,105.93	\$6,101.67	\$12,052.34	\$18,154.01
CORCORAN STATE PRISON	\$5,496.67	\$12,483.79	\$17,980.46	\$6,934.05	\$14,894.72	\$21,828.77	\$6,089.28	\$12,175.24	\$18,264.52
CA. REHABILITATION CENTER	\$2,210.85	\$10,428.54	\$12,639.39	\$2,693.64	\$9,229.42	\$11,923.06	\$3,808.86	\$10,886.98	\$14,695.84
CORRECTIONAL TRAINING FACILITY	\$10,101.62	\$14,141.18	\$24,242.80	\$10,076.35	\$12,559.65	\$22,636.00	\$10,401.42	\$13,654.98	\$24,056.40
CHUCKAWALLA VALLEY STATE PRISON	\$3,326.41	\$9,705.00	\$13,031.41	\$3,741.32	\$10,854.16	\$14,595.48	\$2,063.85	\$9,841.12	\$11,904.97
DONOVAN CORR. FACILITY ROCK MTN.	\$8,090.37	\$7,465.27	\$15,555.64	\$6,512.61	\$6,347.78	\$12,860.39	\$6,435.77	\$6,988.46	\$13,424.23
DUEL VOCATIONAL INSTITUTE	\$3,339.54	\$3,958.16	\$7,297.70	\$3,885.09	\$4,951.03	\$8,836.12	\$4,370.85	\$4,066.18	\$8,437.03
FOLSOM STATE PRISON	\$5,847.92	\$8,557.35	\$14,405.27	\$5,722.92	\$6,662.88	\$12,385.80	\$5,454.50	\$8,059.08	\$13,513.58
CA. STATE PRISON, SACRAMENTO	\$3,335.73	\$5,855.93	\$9,191.66	\$4,620.26	\$5,693.84	\$10,314.10	\$3,341.81	\$4,904.76	\$8,246.57
HIGH DESERT STATE PRISON	\$1,764.82	\$12,764.66	\$14,529.48	\$2,156.22	\$9,680.49	\$11,836.71	\$1,876.28	\$9,072.25	\$10,948.53
IRONWOOD STATE PRISON	\$4,981.02	\$9,592.81	\$14,573.83	\$3,858.20	\$11,092.22	\$14,950.42	\$3,974.77	\$10,554.34	\$14,529.11
CA. STATE PRISON L.A. COUNTY	\$2,301.28	\$11,989.02	\$14,290.30	\$3,223.01	\$9,263.22	\$12,486.23	\$3,471.91	\$11,436.98	\$14,908.89
NO. CA. WOMENS FACILITY	\$1,056.36	\$2,316.83	\$3,373.19	\$1,087.90	\$1,702.60	\$2,790.50	\$989.60	\$1,810.95	\$2,800.55
NORTH KERN STATE PRISON	\$2,255.09	\$2,821.17	\$5,076.26	\$2,306.92	\$2,974.31	\$5,281.23	\$2,364.93	\$3,709.91	\$6,074.84
PELICAN BAY STATE PRISON	\$3,186.82	\$7,870.33	\$11,057.15	\$3,703.22	\$8,439.16	\$12,142.38	\$3,537.51	\$10,542.93	\$14,080.44
PLEASANT VALLEY STATE PRISON	\$2,983.79	\$13,503.30	\$16,487.09	\$3,251.02	\$11,081.44	\$14,332.46	\$7,529.90	\$12,153.70	\$19,683.60
SUBSTANCE ABUSE TREATMENT FACILITY	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,992.35	\$1,992.35
SIERRA CONSERVATION CENTER	\$22,602.99	\$16,598.43	\$39,201.42	\$32,116.42	\$12,652.07	\$44,768.49	\$53,946.43	\$14,367.30	\$68,313.73
SAN QUENTIN STATE PRISON	\$2,918.98	\$2,813.69	\$5,732.67	\$3,072.60	\$2,562.56	\$5,636.10	\$3,061.47	\$2,514.95	\$5,576.42
SALINAS VALLEY STATE PRISON	\$1,632.08	\$17,039.52	\$18,671.60	\$1,422.79	\$11,639.38	\$13,062.17	\$1,548.59	\$14,413.69	\$15,962.28
VALLEY STATE PRISON FOR WOMEN	\$2,054.33	\$12,861.61	\$14,915.94	\$2,641.20	\$11,106.85	\$13,748.05	\$2,360.41	\$11,889.34	\$14,249.75
WASCO STATE PRISON	\$3,244.94	\$3,006.84	\$6,251.78	\$3,236.80	\$2,487.66	\$5,724.46	\$2,820.32	\$2,029.00	\$4,849.32
<b>TOTAL</b>	<b>\$157,480.04</b>	<b>\$306,609.01</b>	<b>\$464,089.05</b>	<b>\$182,941.96</b>	<b>\$281,690.65</b>	<b>\$464,632.61</b>	<b>\$223,598.02</b>	<b>\$300,329.81</b>	<b>\$523,927.83</b>

## STANISLAUS COUNTY PROBATION PILOT WITH FRANCHISE TAX BOARD

**W**hen an offender's term of probation ends, they are often left owing restitution either to the Restitution Fund, a victim or both. It is the State's ultimate goal to ensure that these offenders are held accountable for court-ordered restitution obligations even after their probation or parole ends. To this end, the State Board of Control (SBOC) is currently conducting a pilot project with the Franchise Tax Board (FTB) to focus collection efforts on a population of probationers in Stanislaus County who have completed probation and still owe restitution fines.

Currently, the SBOC supplies FTB with a list of these probationers, and FTB initiates its collection efforts. The collection procedures employed are similar to those processes utilized by FTB's Court-Ordered Debt Collection Program and include demand letters, wage garnishment and bank levies. Because the pilot involves collecting on monies owed to a state agency, the FTB has had to refine its process to allow for the specialized needs of the pilot. These needs include reformatting of the collection letters to reference monies owed to the Restitution Fund rather than owed to county entities. The SBOC anticipates that as this process is refined and the results indicate an increase in restitution fine collections, the program will be expanded to include additional counties wishing to participate, as well as the potential for collections on restitution orders. To cover the cost of administering the collection program FTB receives 15% of the monies collected.

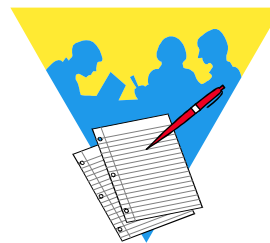
Recognizing this program is relatively new, the SBOC has been unable to gauge its success. However, it is the SBOC's hope that ultimately this pilot will result in a more collaborative effort between state and local government, to ensure that offenders are held accountable for court-imposed sanctions. Additionally, restitution debts which were previously "written off" will be collected and returned to the Restitution Fund and utilized to assist victims of crime in California.

If you have any questions regarding this FTB/Stanislaus Probation pilot with the SBOC please contact Lehua Kalanui-Tonra, SBOC Restitution Analyst at (916)323-6868. ☞

*\*article contributed by Lehua Kalanui-Tonra,  
Restitution Analyst*

### THE RESTITUTION GUIDE IS COMING !

**T**he long-awaited 5th Edition of the SBOC's Restitution Guide is nearing completion! The SBOC appreciates everyone's patience as we have been working diligently to ensure that the information contained in the Guide is accurate and up-to-date. The Guide will be mass-mailed to the SBOC's general mailing list in February 1998. If you would like to order additional copies of the Guide please contact Maureen Dumas, Restitution Analyst at (916) 327-0345. ☞



*\*TBD continued from page 5*

and losses are unknown at the time of sentencing. By imposing TBD restitution orders, the court acts to support a victim's constitutional right to restitution. ☞

**RESTITUTION REVENUE**  
**AUGUST, SEPTEMBER AND OCTOBER 1997**

	Aug-97	Sep-97	Oct-97
Restitution Fines	\$287,704	\$3,529,303	\$3,226,852
Restitution Orders	\$64,392	\$56,485	\$69,436
Diversion	\$1,374	\$61,632	\$62,688